IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1276 OF 1993

Nellikkel Sankaran K. Menon
and Anr. ...Petitioners.
Versus
The Textiles Committee
and Ors. ...Respondents.

....

Mr.Girish Kulkarni with Ms.Swati Deshpande, Advocates for the Petitioners.
Mr.P.Ramaswamy with Mr.A.Siwach i/b Amarchand Mangaldas & S.A. Shroff & Co. for Respondent No.1.

CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **JULY 11, 2006.**

P.C.:

1. Petitioner No.1 expired leaving behind his widow Petitioner No.1-A, who has been brought on record and who by now is aged at least 70 years. Petitioner No.2 at the time when the petition was filed was aged 68 years and by now must be aged about 80 years of age. The petition was filed by the petitioners contending that they all be allowed to opt for the pension scheme as framed by the Respondents and known as the Textiles Committee (Pension and General Provident Fund) Regulations 1985. The petitioners had already

retired by the time the pension scheme had been introduced.

2. The Petition was admitted by this Court and an order came to be passed directing that the petitioners be paid pension amount from month to month from the date of filing of Writ Petition till the hearing and final disposal of the Writ Petition. The Respondents aggrieved preferred Special Leave Petition before the Apex Court. The Hon'ble Apex Court by its order dated 07.04.1994 chose not to interfere with the impugned order. Consequently, Petitioner No.1-A is drawing family pension and petitioner No.2 is drawing pension. There was a third petitioner in writ petition No.825 of 1998, who we are informed, has expired and no steps have been taken to bring on record his legal heirs. In that case, no interim order was passed by this Court. In other words, he was not granted any pensionary benefit. Apart from the three persons, learned counsel for the respondent points out that there are no other persons whose case is same.

3. The issue before us is what construction is

to be given to the proviso to the regulations. Looking at the proviso there is merit in what has been contended on behalf of Respondents, that the proviso applied to only those employees who were in service at the time when the Regulations came into force and would not be applicable to those who had retired by that date. By the Regulation the Respondents gave the new terminal benefit to its employees and at the same time withdrew the existing terminal benefit namely the employers contribution to the provident fund.

4. The question before us is on the peculiar facts and as Supreme Court has not interfered with the order of this Court and considering that petitioner Nos.1-A and petitioner No.2 are the old persons who are claiming the pension benefits, whether we should pass any order, other than the interim order passed by this Court and which was not interfered by the Apex Court. In our opinion, considering that both the petitioners will have a few years of livelihood and considering their old age and the interim order based on which their life must be planned and subject to the petitioners returning the employers contribution

of provident fund, this Petition can be disposed of by issuing the following directions :

i. Both the Petitioners within four months from today to refund the entire amount of the employers provident fund to the Respondents.

ii. In the event, the petitioners do not refund the said amount, it would be open to the Respondents to deduct the amount from the monthly pension at the rate of 50% till the entire amount is recovered.

iii. Subject to what is directed aforesaid, the Respondents to continue to pay the pension as due and payable to the petitioners in terms of the interim order of this Court.

5. With the above directions, Petition stands disposed of.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]